

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.940 OF 2005
ALONG WITH
CIVIL APPLICATION NO.1104 OF 2005

Mohanlal Babulal Rathod (Now deceased)

his legal heirs :

1(A) Nandkishor Mohanlal Rathod

& Ors. ...Appellants

Versus

Maharashtra State Electricity

Board & Anr. ...Respondents

.....

Mr.M.M.Sathaye for Appellants.

Mrs.A.R.S.Baxi for Respondent No.1.

.....

CORAM: A.M.KHANWILKAR, J.

JANUARY 23, 2006.

P.C.

1. Heard Counsel for the parties. Perused
the relevant documents.

2. This Appeal from Order takes exception to the Judgment and order dated 9th September 2005 passed by the Trial Court below Exhibit 5 in Special Civil Suit No.167 of 2002. The said suit is filed by the Appellants for declaration that the bill dated 31st May 2002 raised by the Respondents, is illegal. During the pendency of the said Suit, application for temporary injunction restraining the Respondents from recovering the amount under the disputed bill and from disconnecting electricity supply of the flour mill of the Appellants in consumer No.049031682117 was sought. The lower Court by the impugned Judgement has rejected the application preferred by the Appellants, relying on the document produced by the Respondents/Defendants in the form of Consumers' Personal Ledger maintained by the Respondents in the ordinary course of business. According to the Trial Court, the bill which is put in issue by the Appellants is consistent with the entries found in the Consumers' Personal Ledger maintained by the Respondents throughout. The grievance of the Appellants is that the Appellant has produced

several bills, and receipts in respect of payment of some of the bills either in full or in part. However, those receipts have not been reckoned by the Trial Court while considering the application for temporary injunction. It is the case of the Appellants that the bill in question dated 31st May 2002 does not take into account payment made by the Appellants from time to time in respect of which, receipts were issued by the Officers of the Respondents, which are part of the record before the Trial Court.

3. After having considered the rival submissions and perusing the Consumers' Personal Ledger produced on record by the Respondents, there is substance in the grievance made by the Appellants that the Trial Court has not specifically adverted to the several receipts produced on record by the Appellants, which would indicate that payment was made by the Appellants in cash and some of the payments by cheque. For some of these payments made, it can be noticed from the Consumers' Personal Ledger, that adjustment has been provided for. However, there are other

receipts produced on record to wit- dated 30th March 1994, 30th June 1994 and 24th March 1995 and similar other receipts in respect of which, it is not possible to record a clear opinion that adjustments of those amounts have been made in the Consumers' Personal Ledger.

4. Instead of undertaking this exercise for the first time in this Court, the appropriate course, in my opinion, is to set aside the impugned order and relegate the parties before the Trial Court to re-examine the application for temporary injunction preferred by the Appellants in the pending suit, after considering all the relevant documents produced by the Appellants before the lower Court. The lower Court will require the parties to file a clear statement to consider the nature of grievance of the Appellants as to non-consideration of some of payments made by the Appellants in cash or by cheque while computing the total outstanding amount. According to the Appellants, the Appellants would be entitled to adjustment of at least Rs.1,86,000/- (Rupees One Lakh Eighty-six Thousand), in respect of which the

Appellants are able to produce receipts issued by the Authorities. Whether adjustment of those payments received has been given in the bill and the Consumers' Personal Ledger by the authorities will have to be scrutinised by the Trial Court on the basis of record produced before it by the rival parties. I am not expressing any opinion with regard to the correctness of the said stand taken by the Appellants. Suffice it to observe that the Trial Court has not at all considered several receipts produced by the Appellants, nor has it clearly found that the payment referred to in the said receipts have been provided adjustment by the Board in the Bills issued to the Appellants or for that matter, in the Consumers' Personal Ledger maintained by the Board. All those matters will now have to be considered by the Trial Court.

5. While parting, I may mention that the total bill payable by the Appellants according to the Respondents is in the sum of Rs.5,15,271.93. Even if the case of Appellants for adjustment of Rs.1,86,000/- paid from time to time by the Appellants is to be accepted as it is, even then,

the Appellants have made deficit payment in the sum of over Rs.1,00,000/- (principal amount). This is so, because the net arrears as on 30th April 2002 is shown as Rs.2,91,391.25. Deducting sum of Rs.1,86,000/-, the Appellants are still in deficit in the sum of Rs.1,05,391.25. The Appellants would also be liable for interest on the unpaid amount as referred to above.

6. Taking overall view of the matter, while remanding the matter to the Trial Court for appropriate decision on merits of the Application in accordance with law, the Appellants are directed to pay a sum of Rs.2,10,782.50 to the Respondents within four weeks from today, as condition precedent for continuation of interim protection granted to the Appellants.

7. The Trial Court will entertain the Application of the Appellants only if the Appellants were to comply with the direction of payment of Rs.2,10,782.50 to be paid within four weeks from today and continue the interim protection till the disposal of the interim

application, which is now restored to the file of the Trial Court or till such other period as may be considered appropriate by the Trial Court.

8. This appeal partly succeeds on the above terms with direction to the Trial Court to finally dispose of the application as expeditiously as possible, preferably within four months from the deposit of deficit amount by the Appellants as referred to above. All questions are left open to be considered on merits. Parties to appear before the Trial Court on February 20, 2006. On that day, the Trial Court may issue appropriate direction and/or proceed with the hearing of the Application.

A.M.KHANWILKAR, J.